

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE ADDING SECTIONS 18.04.333, 18.88.015 TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE COUNTY OF MADERA AS AN URGENCY ORDINANCE (4/5 VOTE)

The Board of Supervisors of the County of Madera does hereby ordain as follows:

SECTION 1

(a) In November, 1996, the Voters of the State of California approved Proposition 215 [codified as Health & Safety Code 11362.5 et seq. and entitled the Compassionate Use Act of 1996].

(b) The State enacted SB-420 in 2003 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt rules and regulations consistent with SB-420.

(c) The Compassionate Use Act of 1996 does not expressly authorize medical marijuana dispensaries, and the State has not given direction as to how cities or counties are to implement the Act, particularly with regards to the distribution of medical marijuana through medical marijuana dispensaries.

(d) In May, 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative and Jeffery Jones* holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C Section 841 (CSA), and there is no medical necessity defense allowed under federal law.

(e) On June 6, 2005, the United States Supreme Court held, in *Gonzales v. Raich*, that Congress has the authority under the Commerce Clause of the United States Constitution, and has the power under the CSA, to prohibit local cultivation and use of marijuana even though it would be in compliance with California law.

(f) In light of these decisions, the Board of Supervisors finds that there is an inconsistency between federal law and state law regarding the establishment of medical marijuana dispensaries, as defined herein, and that, until such inconsistency is resolved between the federal and state laws the Board of Supervisors intends to prohibit medical marijuana dispensaries within the County of Madera.

(g) A duly noticed public hearing regarding the proposed amendments to the County Code was held by the Board of Supervisors on _____, 2009.

SECTION 2

The Board of Supervisors finds that:

(a) Medical marijuana dispensaries should be prohibited in the County of Madera because the presence of such dispensaries causes adverse secondary impacts that are detrimental to the health, safety, and welfare of the community. The adverse secondary impacts associated with medical marijuana dispensaries include, but are not limited to the substantial likelihood for increases in criminal activity, illegal drug activity, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and burglaries at dispensaries.

(b) This ordinance is consistent with state law because the prohibition of medical marijuana dispensaries does not affect an individual's right to cultivate and possess medical marijuana and does not prevent a patient's primary health care provider from dispensing medical marijuana to their patient, as provided under California law.

(c) This ordinance is consistent with federal law because federal law prohibits the cultivation, possession, or distribution of marijuana.

(d) All existing dispensaries are illegal pursuant to County Code Section 18.88.020 declaring that all unclassified uses are prohibited.

SECTION 3

Title 18 Chapter 4 of the Madera County Code is hereby amended to add Section 18.04.333 to read as follows:

18.04.333 Medical Marijuana Dispensary.

Medical Marijuana Dispensary means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in California Health and Safety Code section 11362.5 et seq.

SECTION 4

Madera County Code Title 18, Chapter 88 shall be and hereby is amended to add a new Section 18.88.015 to read as follows:

18.88.015 Prohibited uses.

The following land uses are prohibited in all zoning districts:

- (1) Medical marijuana dispensaries;

(2) Notwithstanding any other provision of this Code, the sale or distribution of a controlled substance under federal or state law shall not be a permitted use on any property or in any building or structure in any zone throughout the county, unless the person or entity selling or distributing the controlled substance has all applicable state and federal pharmaceutical licenses. This prohibition shall not interfere with the individual rights of qualified persons to participate in collectives or cooperatives in order to possess or use marijuana for medical purposes as provided for by the voters of the State of California under the Compassionate Use Act of 1966 and of the California Legislature under Senate Bill 420 (2003).

SECTION 5

SEVERABILITY.

Each of the provisions of this ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 6

EFFECTIVE DATE. (urgency declaration – 4/5 vote required)

This ordinance is required to take effect immediately for the immediate preservation of the public peace and safety. The facts constituting the urgency are as follows:

The experience of law enforcement in other California counties which permit Medical Marijuana Dispensaries, as shown in the MADNET report attached to the September 4, 2009 Board Letter, is that a significant increase in crime occurs due to the presence of these dispensaries, and that this increase will create an overwhelming burden on law enforcement. It was also stated in the testimony before the Board at the September 14th hearing that two dispensaries were currently open for business in the county of Madera in violation of the current Madera County zoning ordinance.

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The foregoing Ordinance was adopted this _____ day of _____,
2009, by the following vote:

Supervisor Bigelow voted: _____

Supervisor Moss voted: _____

Supervisor Dominici voted: _____

Supervisor Rodriguez voted: _____

Supervisor Wheeler voted: _____

Chairman, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By _____